IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3695 OF 2003

Nilesh Kumar Shantilal Jain .. Petitioner.

V/s.

State of Maharashtra & Ors. .. Respondents.

.

Mr. Subhash Jha i/by M/s. Law Global for the Petitioner.
Mr. Ganesh Gole holding for M/s. Tamhane & Co. for Respondents 2 & 3.
Mr. D.P.Adsule, APP for the State.

CORAM : A.S. AGUIAR, J.
DATED : 24.08.2004.

PC:-

Heard.

This Application is filed by the petitioner, original complainant in C.R. No. 23/ 2003 registered by the Crime Branch (EOW), originally as C.R.No. 334/2002, MIDC Police Station, Andheri for the offence under section 406, 420, 506(2) r.w. Section 34 of IPC. The petitioner prays for cancellation of the anticipatory bail granted to the accused by the Sessions Court and confirmed by this court by its order dated 20th August, 2003. This court by the said order dated 20th August, 2003 imposed the following conditions while confirming the

anticipatory bail order, namely, - (i) That the applicant accused shall attend the office of the Crime Branch (Economic Cell) MIDC daily for a period of two weeks between 9.00 a.m. To 6.00 p.m. And thereafter, as and when required by the police til the filing of the chargesheet. , (ii) Applicant will not go out of jurisdiction and (iii) Applicant to co-operate with the investigating authorities and not to tamper with the evidence.

It is the case of the present petitioner that the accused has committed breach of the above conditions as he has not attended the office of the Crime Branch (Economic Cell), MIDC Police Station, Andheri, as stipulated in the order and further that he has been threatening the witnesses and thereby tampering with the evidence. In support, the petititoner refers to affidavits of two witnesses, which are at pages 37 and 40, Exh. ` F & `G' respectively. Perusal of the said affidavits show that the applicant accused had mis-behaved and threatened the complainant if he did not withdraw the statement given by complainant at MIDC Police Station. It is pertinent to note that police have only recorded an N.C. on the said complaint and there has been no follow up action by the police nor has the complainant moved the police to take further action on his complaint. Learned Advocate for the petitioner also pointed that there are further incidents as set out by the petitioner in his affidavits dated 31st March, 2004 and 19th August, 2004. Both affidavits are filed after the filing of the petition. The latest affidavit dated 31st March, 2004 refers to the incident of

dacoity in the complainant' s father' s jewellary shop, from which jewellary worth Rs. 42 lakhs were looted. The finger of suspicion is pointed out to the accused-applicant. Another incident is that on 30th July, 2004 when the complainant' s father had gone to the temple, he was asked by some persons to withdraw the case filed against the accused and threatened that if he did not withdraw the said case, he would be killed. It was also alleged in the said affidavit that thereafter, the accused /respondents 2 and 3, who were having choppers and sticks rushed to the complainant' s father, who apprehending danger to his life and limbs, managed to escape. However, despite the said incident, police did not take any action.

So far as the first contention is concenred, in respect of breach of conditions imposed on the accused while granting the anticipatory bail, the learned Advocate for the petitioner accused has produced the attendence diaries, showing that the accused did attend police station as per the order of this court.

So far as the second contention is concerned, it is seen that the affidavits filed alongwith the application, only talks about some threats given to the petitioner and on the basis of which N.C. Complaints only have been recorded. The complainant has approached this court only on the basis of those two affidavits. The affidavits dated 31st March, 2004 and 19th August,

2004 making a serious allegations are of recent origin and in respect of incident which allegedly took place after filing of the petition. It is pertinent to note that these affidavits make out very serious offence and hence, they can form the subject matter of independent complaints. But the allegations made in these affidavits cannot form the basis for cancelling the anticipatory bail granted to the accused in C.R.registered namely, 23/2003. It is also pertinent to note that both the complainant as well as accused are owners of jewellary shops in the same locality and it appears that there is some kind of business rivallary between the two. In these circumstances, the present application deserves to be dismissed and the same is dismissed accordingly.

Application disposed of .

.....